

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES A. WILSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 05-399-JJF
)	
STANLEY TAYLOR, et al.,)	
)	
Defendants.)	

MOTION TO STRIKE PAINTIFF’S SUR-REPLY TO DEFENDANTS’
MOTION TO DISMISS

Come now, Defendants, through the undersigned counsel and oppose Plaintiff Wilson’s Memorandum in Support of his Opposition to Defendants’ Motion to Dismiss/Summary Judgment, Amended Complaint (“Response”). In support of their position, Defendants state the following:

1. Defendants filed their Motion to Dismiss/Summary Judgment with a Memorandum of Points and Authorities on April 18, 2006. (D.I. 80 and 81). On May 5, 2006, Plaintiff filed his Answer to the motion to dismiss. (D.I. 84). Defendants filed their reply on June 2, 2006, thus closing the pleadings for this motion. (D.I. 93). Plaintiff filed a motion to amend his complaint on May 8, 2006. (D.I. 85). Defendants responded to this motion to amend his complaint for a third time. (D.I. 95). Defendants noted that the motion to amend centered solely on Plaintiff Wilson’s housing and employment. (D.I. 95).

2. Plaintiff’s memorandum, filed on June 21, 2006, is an improper sur-reply to the motion to dismiss. As a reply in support of his motion to amend his complaint for a third time, the memorandum adds nothing in support of his claims.

3. Plaintiff believes he was moved from the Sussex Correctional Institution (“SCI”)

to the Delaware Correctional Center (“DCC”) in order to participate in the Greentree program in retaliation for filing a lawsuit. (D.I. 99). However, as evidenced by the fact that Plaintiff Wilson continues to file documents in this case, and in at least one other case,¹ he is not being denied access to the courts. Plaintiff was transferred so that he could participate in a rehabilitative program. In addition, Plaintiff still has no liberty interest regarding where he is housed while in the custody of the Department of Correction. *Leyton v. Beyer*, 953 F.2d 839, 845 (3rd Cir. 1992)(holding that there is no liberty interest in being placed in a particular housing unit). Nor does Plaintiff have any liberty interest in employment while in prison. *Abdul-Akbar v. Dep’t of Correction*, 910 F. Supp. 986 (D. Del. 1995)(inmates have no “legitimate entitlement” to employment or rehabilitation). Plaintiff cannot show that he suffered an adverse action, and thus cannot provide any nexus between the pursuit of his lawsuits and being moved from SCI to DCC. He is still pursuing the lawsuits even while he is in a program at DCC.

WHEREFORE, Defendants request that this Honorable Court strike Plaintiff Wilson’s additional memorandum in opposition to Defendants’ motion to dismiss as an improper sur-reply.

**STATE OF DELWARE
DEPARTMENT OF JUSTICE**

/s/ Lisa Barchi

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DATE: July 10, 2006

Attorney for Defendants

¹ James Wilson is the lead plaintiff in another case in the United States District Court. The case is 06-053-KAJ.

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2006 I electronically filed *Defendants' Motion to Strike Plaintiff's Sur-Reply to Defendants' Motion to Dismiss* with the Clerk of Court using CM/ECF. I hereby certify that on June 3, 2006 I have mailed by United States Postal Service, the document to the following non-registered participant:

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